

SERVED: April 28, 1993

NTSB Order No. EA-3866

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 14th day of April, 1993

_____)	
JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-11045
v.)	
)	
RANDALL C. BYROM,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge Joyce Capps issued at the close of a hearing held in this matter on February 20, 1991.¹ In that decision, the law judge upheld the revocation of respondent's airline transport pilot certificate pursuant to section 609(c)(1)

¹ Attached is an excerpt from the hearing transcript containing the oral initial decision.

of the Federal Aviation Act of 1958.² The law judge found established the allegations in the Administrator's order that on or about June 30, 1987, respondent operated a flight from the United States to Stella Maris, Bahama Islands, in furtherance of and to facilitate a conspiracy to import cocaine into the United States, and that on or about July 14, 1989, he was convicted of conspiracy to import cocaine into the United States, in violation of 21 U.S.C. 963.

On appeal, respondent argues that section 609(c) does not apply to this case because he did not serve as an airman in connection with the offense of which he was convicted, and that any action against his certificate should have been taken under 14 C.F.R. 61.15. Respondent also suggests that his June 27, 1990 flight was related only to the charge of which he was acquitted (attempting to import cocaine), and invokes notions of Due Process and Double Jeopardy but does not clearly explain in what

² Section 609(c)(1) provides:

(c)(1) The Administrator shall issue an order revoking the airman certificates of any person upon conviction of such person of a crime punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance), if the Administrator determines that (A) an aircraft was used in the commission of the offense or to facilitate the commission of the offense, and (B) such person served as an airman, or was on board such aircraft, in connection with the commission of the offense or the facilitation of the commission of the offense. The Administrator shall have no authority under this paragraph to review the issue of whether an airman violated a State or Federal law relating to a controlled substance.

way those notions were offended. Finally, he challenges the "period of revocation" sought by the Administrator (five years),³ claiming that it should be limited to the length of his criminal sentence (30 months), and that it should be made retroactive to May 19, 1990, the date on which he allegedly surrendered his pilot certificate to his attorney pursuant to an order of the presiding judge in his criminal case.

Upon consideration of the briefs of the parties and the entire record, the Board has determined that respondent's appeal is without merit and the order of revocation must be affirmed.⁴

The preponderance of the evidence in this case supports a finding that on or about June 30, 1987, respondent flew from the United States to Stella Maris in the Bahamas in order to transport pilots who were supposed to have just completed a drug smuggling flight from Colombia back to the United States. Although that particular smuggling operation from Colombia was apparently not successful due to a plane crash before reaching

³ Counsel for the Administrator stated at the hearing that respondent would not be eligible for issuance of a new certificate until five years after the effective date of this revocation. (Tr. 20.) The Administrator explains in the reply brief that at the time of respondent's criminal activity (1987), section 602(b)(2)(A) of the Federal Aviation Act, 49 U.S.C. App. 1422(b)(2)(A), prohibited reissuance of a certificate for at least five years after the date of a revocation under section 609(c), except in certain instances. That section has since been amended to provide for permanent revocation.

⁴ In response to the Administrator's reply brief, respondent filed a "Supplemental Response" which the Administrator has moved to strike. Since respondent neither requested nor was granted leave to file an additional brief, the motion is granted pursuant to 49 C.F.R. 821.48(e).

Stella Maris, respondent made the flight nonetheless, and after locating the pilots on a nearby island, did fly them back to the United States.⁵ It is clear that respondent made this flight as an integral part of an overall conspiracy to import cocaine into the United States. Accordingly, this case falls squarely within the terms of section 609(c)(1).

Respondent's remaining arguments warrant little discussion. We have already rejected the claim that the Double Jeopardy Clause of the Constitution applies to a revocation proceeding, which is civil and remedial in nature, since that clause only prohibits trying or punishing twice criminally for the same offense.⁶ As for the length of time which must pass before respondent is eligible for issuance of a new certificate, that is not an issue which is properly before us. Our review authority under section 609(c) is limited to either affirming or reversing the Administrator's order. Administrator v. Rawlins, 5 NTSB 2036, 2037 (1987).

⁵ See testimony of former Drug Enforcement Agency Special Agent Cutcliffe at Tr. 14, and Exhibit A-3 (copy of the court's opinion affirming respondent's conviction, United States v. Byrom, 910 F.2d 725 (11th Cir. 1990) at 728-29).

⁶ See Administrator v. Rawlins, 5 NTSB 2036, 2037-38 (1987), citing cases.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision and the order of revocation are affirmed; and
3. The revocation of respondent's airman pilot certificate shall commence 30 days after the service of this opinion and order.⁷

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁷ For the purpose of this order, if respondent's certificate has not already been surrendered to the FAA, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).